

FCC MAIL SECTION  
Before the  
Federal Communications Commission  
Washington, D.C. 20554

FEB 8 4 53 PM '94

MM Docket No. 94-3  
DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Silverton, Colorado)

RM-8384

### NOTICE OF PROPOSED RULE MAKING

Adopted: January 14, 1994; Released: February 8, 1994

Comment Date: April 1, 1994

Reply Comment Date: April 18, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Caren Lacy ("petitioner") permittee of Station KWXA(FM), Channel 259C2, Durango, Colorado, requesting the substitution of a Class A channel for Channel 257A at Silverton, which is vacant and unapplied for, to accommodate petitioner's construction permit application site located on Forest Service land.

2. Petitioner advises that it received a reasonable assurance from the Forest Service of a leased transmitter site to accommodate its application proposal. Although petitioner was granted a construction permit (File No. BPH-910227MG) at coordinates 37-19-59 and 107-49-13, it has been advised that the Forest Service requires communications facilities within its confines to be located at designated electronics sites. Accordingly, petitioner advises that the Forest Service has specified an electronics site at coordinates 37-20-21 and 107-49-25 to accommodate communications installations. However, the Forest Service's designated site is 54.3 kilometers from Channel 257A at Silverton, at coordinates 37-48-18 and 107-38-03, whereas a distance of 55 kilometers is required between second adjacent Class A and C2 channels. Petitioner states that no other Class C2 channel is available as a substitute for Channel 259C2 at Durango. Moreover, petitioner states that while a downgrade to Class C3 status at the Forest Service's designated site would negate the noted spacing deficiency, such action would deprive petitioner of the opportunity to provide expanded service to the Durango area, as previously authorized. Therefore, in an effort to accommodate petitioner's application for Channel 259C2 at Durango, petitioner seeks the substitution of another equiv-

alent Class A channel for Channel 257A at Silverton.<sup>1</sup> Although petitioner suggested several Class A channels, we have determined that Channel 224A is preferable as it would afford greater flexibility in site selection.

3. We believe the public interest would be served by seeking comments on the proposed substitution of Channel 224A for Channel 257A at Silverton to accommodate the petitioner's application site for Channel 259C2 at Durango. As indicated in footnote 1, *supra*, if no applications are filed for Channel 257A during the comment period in this proceeding, and no interest is expressed for Channel 224A, we shall delete Channel 257A at Silverton without replacement for lack of interest.

4. Channel 224A can be allotted to Silverton without the imposition of a site restriction at coordinates 37-48-43 and 107-39-50.

5. In light of the above, the Commission believes it is appropriate to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

#### OPTION I

| City                | Present              | Channel No.<br>Proposed |
|---------------------|----------------------|-------------------------|
| Silverton, Colorado | 257A, 279C2,<br>297C | 224A, 279C2,<br>297C    |

#### OPTION II

|                     |                      |             |
|---------------------|----------------------|-------------|
| Silverton, Colorado | 257A, 279C2,<br>297C | 279C2, 297C |
|---------------------|----------------------|-------------|

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before April 1, 1994, and reply comments on or before April 18, 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Caren Lacy  
1885 Ponder Heights Drive  
Colorado Springs, CO 80906-5888

<sup>1</sup> Channel 257A was allotted to Silverton in MM Docket No. 83-85. The channel is vacant with no applications on file. If applications are filed for Channel 257A at Silverton during the comment period in this proceeding, the applicants will retain cut-off protection and will be permitted to specify a new Class

A channel, if the instant proposal is adopted. If no applications are filed as specified above, we will delete Channel 257A at Silverton and no substitute channel will be made to the community.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Acting Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

#### APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.